

Restoring the importance of the prospectus in the UK IPO process: three months in and counting

In July 2018 the UK Financial Conduct Authority (FCA) introduced changes to the Conduct of Business sourcebook (COBS) to improve the timeliness of information made available to the market during a UK IPO. In essence, the FCA has switched the sequence of events between publication of research and prospectus in order to restore primacy of the prospectus in the UK IPO process. Specifically, the changes to COBS 11A apply to a firm that is:

- carrying on underwriting or placing services for an issuer publishing a prospectus for shares or GDRs in connection with an admission to trading on a regulated market in the UK for the first time; and
- intending to publish connected research prior to the IPO.

In these instances, equal access – joint or separate – must now be given to unconnected analysts who wish to publish research on an IPO candidate and a document (a registration document or a prospectus) must be published between at least one and seven days before research publication.

What is the impact on the IPO process?

Connected research must be published no earlier than seven days following the publication of an approved prospectus or registration document, unless joint access is given to unconnected analysts,

in which case connected research can be published the next day. Consequently, underwriters have the option of:

- including unconnected analysts within the typical analyst presentation process (with all the consequent concerns around confidentiality) – thus allowing research to be published the day after publication of the prospectus or registration document and avoiding a seven-day delay to the IPO timeline; or
- conducting an equivalent presentation/making equivalent materials available to unconnected analysts (i.e. as made available to connected analysts) from the date of the publication of the prospectus or registration document and incurring a seven-day delay to the IPO timeline. This allows unconnected analysts to “catch up” with their connected colleagues.

In both cases, the trigger that allows connected research to be published (and the Intention to Float (ITF) to be made and pre-deal investor education (PDIE) to commence) is the publication of a registration document or a prospectus. Clearly, all stakeholders expect that, in the vast majority of cases, a registration document, rather than a prospectus, will be the relevant trigger. That is to say that, where the purpose of PDIE is price discovery, it would be unusual for the prospectus publication to precede this phase. The preparation and publication of a registration document (bringing forward the public phase of the IPO process) is therefore the single most important change to the UK IPO legal execution process introduced by the new rules. The optionality, on which underwriters may differ, is:

- whether unconnected analysts will be addressed jointly or separately; and
- if separately, whether there will be any impact on overall IPO timing or whether the seven-day delay incurred will be subsumed elsewhere within the public phase of the IPO process.

AFME/Euro IRP involvement

AFME and the European Association of Investment Research Providers have published a joint paper

entitled “UK initial public offerings – process in relation to providing issuer access for unconnected analysts”. This sets out the steps to be followed in implementing the joint or separate approach to unconnected analysts and deals with issues such as identifying the unconnected analysts to whom equivalent information should be made available, confidentiality and country-specific research restrictions.

AFME has also prepared a Q&A paper with the UKLA to clarify steps around the practical implementation of the registration document process. This is helpful to understand that:

- the UKLA will accept both registration document and prospectus in parallel and maintain a 10-day response time;
- the UKLA will provide a “cleared for comments” response, at the time of the registration document, on the prospectus – but any additional information will be dealt with as with any re-filing;
- in the spirit of full disclosure and primacy of the prospectus, the UKLA expects that the next approved document (following the registration document) will be an approved prospectus used for the purposes of the roadshow (rather than a pathfinder);



- the UKLA would expect no “more than one sentence” to explain the context of a potential forthcoming IPO in the registration document, but otherwise the UKLA would not expect the registration document to be a pre-announcement of the IPO; and
- the UKLA does not expect that the registration document would constitute a financial promotion under the UK Financial Services and Markets Act 2000 (FSMA).

Registration documents – Aston Martin, Funding Circle

The registration documents published so far are substantially consistent with UKLA commentary:

- Annex I (share registration document schedule) compliant;
- not an advertisement for the purposes of the Prospectus Rules;
- not a UK financial promotion under FSMA;
- no reference to the IPO; and
- corporate governance/board composition consistent with that of a non-listed company.

Unconnected analyst approach so far

Each issuer (Aston Martin, Funding Circle) has elected to interact with unconnected analysts on a separate basis incurring at least a seven-day delay to publication of connected research (following registration document publication). Consequently:

- on the date of publication of the registration document, a “Potential Intention to Float” announcement has been published containing extracts of the registration document and offer summary (see below extracts):
 - **Announcement of Intention to Publish a Registration Document and Potential Intention to Float on the London Stock Exchange** – Funding Circle Holdings Limited (the “Company”) announces that it intends to publish today a Registration Document and is considering proceeding with an initial

public offering (the “IPO” or the “Offer”). The Company is considering applying for admission of its ordinary shares (“Shares”) to the premium listing segment of the Official List of the Financial Conduct Authority (the “Official List”) and to trading on the London Stock Exchange’s main market for listed securities (together, “Admission”).

- **Supplemental information for bona-fide, unconnected sell side research analysts** – A presentation in person by Funding Circle for unconnected sell side research analysts will be held on 6 September 2018 and the presentation and related information will be made available via a link to unconnected research analysts today. Please contact Peter Glover (ir@fundingcircle.com) at Funding Circle if you would like to attend the presentation and/or access information on Funding Circle.
- **Announcement of Publication of Registration Document, 2018 Interim Financial Results and Potential Intention to Float on London Stock Exchange** – Aston Martin Holdings (UK) Limited (the “Company”, and its subsidiaries, “Aston Martin Lagonda” or the “Group”), the iconic producer of hand-crafted luxury sports cars, is today announcing its potential intention to undertake an initial public offering (the “IPO” or the “Offer”) and the expected publication of a registration document (the “Registration Document”) that has been submitted for approval to the UK Financial Conduct Authority (the “FCA”).
- **Access to supplemental information for bona-fide, unconnected research analysts:** – Unconnected sell side research analysts can obtain additional information, including details of a presentation to be given by Aston Martin Lagonda, by requesting access at the following website: <https://www.astonmartinlagonda.com/investors/unconnected-analysts>

further timing below ([Funding Circle](#)):

3 September

10 September

19 September

28 September

Reg Doc/PITF

7 days

ITF

Under 2 weeks

Price Range

Under 2 weeks

Pricing

The specific GDR regime

The building block approach to prospectuses, and the way in which the tables of combinations from the Prospectus Regulation are drafted, lend themselves well to the approach now taken under COBS 11A and the expectation that a registration document will be the relevant document triggering research. The GDR building block, however, is not drafted in the same way and includes information that is set out within the comparable share securities note. Consequently, creating a registration document for a GDR prospectus may require some derogation requests to the UKLA in this respect.

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